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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/776,479   | 02/10/2004  | Russell J. Redmond   | 017067-002830US     | 4063             |
| 44444  | 7590        | 09/21/2004           | EXAMINER            |                  |
| BAXTER HEALTHCARE CORPORATION<br>ONE BAXTER PARKWAY<br>DF2-2E<br>DEERFIELD, IL 60015 |             |                      | JACKSON, GARY       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3731                |                  |

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/776,479             | REDMOND ET AL.      |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Gary Jackson           | 3731                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 4/26/2004.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Double Patenting***

Claims 17-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 50-64 of U.S. Patent No. 6,334,865. See the rejection of claims 1-16 below; the same principle apply here.

Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 50-64 of U.S. Patent No. 6,699,262. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter - a method for sealing a percutaneous tissue track extending to a blood vessel comprising: establishing a semipermeable barrier at a distal end of the tissue track adjacent to a blood vessel access opening, the semipermeable barrier permitting passage of at least one blood component therethrough and preventing passage of a chosen hemostatic material therethrough; and flowing the chosen hemostatic material through a laterally collapsible tube into the tissue track, wherein the at least one blood component passing through the semipermeable barrier interacts with the chosen hemostatic material to seal effectively the tissue track while the semipermeable barrier prevents passage of the hemostatic material into the blood vessel lumen –is fully disclosed in the patent – that right to exclude covering - A method for sealing a percutaneous tissue track extending to a blood vessel comprising: establishing a semipermeable barrier at a distal end of the tissue track adjacent to a blood vessel access opening, the semipermeable barrier permitting passage of at least one blood component therethrough and preventing passage of a chosen hemostatic material therethrough, said establishing step being carried out using a plurality of laterally expansible arms defining fluid

flow, permitting gaps therebetween when laterally expanded; and introducing the chosen hemostatic material into the tissue track, wherein the at least one blood component passing through the semipermeable barrier interacts with the chosen hemostatic material to seal effectively the tissue track while the semipermeable barrier prevents passage of the hemostatic material into the blood vessel lumen.

The patent not only provides protection for the claims of the patent but also extends patent coverage to the method and apparatus of the present. The claims of the present application because of the phrase "comprising" not only would provide patent protection for the claimed method and apparatus already disclosed and covered by the claim of the issued patent. Thus, the controlling fact is that the present patent protection for the device and method, fully disclosed in and covered by the claim of the patent, would be extended by allowance of the claims in this application.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (703) 308-4302. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on (703) 308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Jackson  
Primary Examiner  
Art Unit 3731



gj  
September 19, 2004